

## Contractor umbrella companies and their contractors sent fresh warning from HMRC

[Umbrella company contractors](#) could be in line for further flak from the taxman if they find themselves in the 'crossfire' between their umbrellas and the taxman. Contractors are even being encouraged to 'shop' their umbrella companies over things like being too free and easy with their [expenses dispensations](#).

HMRC has just released a briefing – [Revenue & Customs Brief 50/09](#) – in which it unambiguously announces its intention to step up investigations of what it perceives as abuses of expenses and dispensation rules by umbrella companies.

According to Kate Cottrell, of contractor legal specialists [Bauer and Cottrell](#), it is no accident that this briefing comes hard on the heels of HM Treasury's [recently launched consultation](#) into 'false employment' in the construction industry.

"If the new rules over construction employment come into force, umbrella companies are the logical destination for labour-only subcontractors," explains Cottrell. "There is no talk about employment tests – government has just changed the rules."

### Spending HMRC's compliance budget

"HMRC is flexing its hefty [£1 billion compliance budget](#) with these threatened umbrella company investigations," continues Cottrell. "And providing a hotline for workers to shop their agencies or umbrellas for non-compliant activity is a new move on the part of the Revenue."

The [Revenue & Customs Brief 50/09](#) follows compliance activities already underway, and highlights those areas of most concern to HMRC, including:

- o Potentially ineffective overarching employment contracts
- o Dispensations that are invalid, or which have been wrongly applied
- o Not complying with the terms of the dispensation
- o "Expense payments" made tax-free without that level of expense, or in many cases any expense, having been incurred
- o Potential illegal deductions from contractors' pay
- o Ineffective and sometimes unlawful management processes; and
- o Breaches of the national minimum wage.

Evidence of 'joined-up' government is apparent, as HMRC says it is working with a number of government departments and authorities to "identify businesses acting in contravention of legislation". HMRC also states its intention to "penalise breaches of the law as they are identified".

### Contractor flight from umbrella to limited

Despite the loss of umbrella company contractors' travel and subsistence benefits being on the cards, Cottrell does not see a mass migration of construction and umbrella company contractors choosing to work through their own [limited companies](#).

This is an area of expertise for Cottrell, whose firm specialises in assessing contractors' suitability and [IR35](#) status to make the [move from umbrella companies to starting contractor limited companies](#).

"IR35 and deemed payments is still the dominant and driving legislative force in the contractor space," she says. "In addition to IR35, low earnings also prove to be a significant barrier to incorporation."

And, as she explains, HMRC has become more aggressive in its stance on expenses and ensuring certain categories of workers do not have a tax advantage: "If a contractor is working through an agency, they cannot claim any travel or subsistence expenses. In HMRC's eyes, there is a fine line between being an umbrella company and becoming an employment business."

### Educating end users

End-user clients who employ agency workers and umbrella company contractors have been targeted by HMRC with advice on how to conduct due diligence on their labour providers.

Claiming this is to reduce fraud and the incidence of unpaid taxes, HMRC has issued a related advisory leaflet. Titled [Use of Labour Providers](#), this urges end-user clients to carry out appropriate checks on labour suppliers and warns that, "Failure to carry out appropriate checks may be evidence

“ IR35 and deemed payments is still the dominant and driving legislative force in the contractor space ”  
Kate Cottrell, Bauer & Cottrell

that you knew or should have known of the fraud." The leaflet then leaves things vague, with a catch-all disclaimer that says, "HMRC is unable to tell you exactly what checks you should undertake."

Cottrell's view is that this is the last warning to non-compliant umbrella companies from HMRC before it starts to spend a significant chunk of its £1 billion compliance budget targeting non-compliance. The outcome, she feels, will be the recommendation that non-compliant umbrella companies will lose their expenses dispensations, but could result that all umbrella companies will lose them.

"The false employment in construction consultation shows just how far the government is prepared to go to impose its will on the labour market," Cottrell says. "After the construction sector, umbrella company contractors appear to be firmly in the government's sights as the next target."

**Published: Monday, August 10, 2009**

[Tweet](#)

© 2011 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#). If you want to use any content you have seen on this site then please [request our media pack](#) and ask for details of our Content Licencing Service.

#### Readers Comments...



Be the first to comment on this article

#### Also of interest...

##### Related News:

- Treasury targets construction contractors with false self-employment consultation

##### Related Guides:

- Umbrellas, HMRC, and dispensation agreements
- What is IR35?
- Reasons and practicalities of moving from an umbrella to a limited company

##### Related Calculators:

- Contractor Umbrella Calculator

##### Related Internet Links:

- Bauer & Cottrell
- Revenue & Customs Brief 50/09



ABCe verified website - last audit confirmed **130,682 monthly unique visitors**

© Copyright 2011 Byte-Vision Limited UK. All rights reserved. [Copyright notice](#)